

THE IDAHO AGREEMENT
AUGUST 9, 1993

Public Reading Room
U. S. Department of Energy
Idaho Operations Office



OFFICE OF THE GOVERNOR

STATE CAPITOL

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August 9, 1993

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By Telefax

The Honorable Hazel O'Leary
Secretary of the U.S. Department of Energy
Washington, DC 20585

The Honorable John H. Dalton
Secretary of the U.S. Department of Navy
Washington, DC 20350-1000

Re: United States of America v. Andrus, Civil Action No.
91-0054-S-HLR (D. Idaho)

Dear Secretaries O'Leary and Dalton:

I am pleased that we have reached an agreement that closes the legal battle over the U.S. Department of Energy's acceptance and storage of spent nuclear fuel--including spent fuel from reactors belonging to the U.S. Naval Nuclear Propulsion Program--at the Idaho National Engineering Laboratory. This letter memorializes our agreement to compromise and settle the lawsuit.

As we have discussed, the June 28th Order of the Court--including the injunction preventing future shipments of spent nuclear fuel to the Idaho National Engineering Laboratory (INEL) until the Department of Energy (DOE) issues a record of decision based upon an environmental impact statement for those actions under the National Environmental Policy Act of 1969 (NEPA)--shall remain intact subject only to the clarifications and modifications set forth below. Our agreement ensures that no more than 19 containers of spent naval fuel will be shipped to INEL before the record of decision on the site-wide environmental impact statement is issued in June of 1995, unless otherwise modified by the Court. This agreement represents more than a seventy percent reduction in both the number of shipments and weight of spent nuclear fuel that the U.S. Naval Nuclear Propulsion Program (Navy) had intended to make during that time. (Previously, 64 containers of spent naval fuel had been scheduled for shipment.)

In light of our agreement, and assuming the Court approves the agreement, you also have stipulated to forgo the right to appeal or to seek other relief from the Court's decision.

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Further, you have agreed to not seek any legislation or attempt to modify the Court's decision or the agreement without Idaho's consent.

Having laid out the predicates, I shall now turn to the details. Our agreement is as follows:

The Court's June 28th Order--including the injunction against future shipments of spent nuclear fuel to the INEL while DOE complies with NEPA--shall remain in full force subject only to the clarifications and modifications set forth herein.

In preparing the court-ordered environmental impact statement, DOE shall:

1. On or before November 1, 1993, issue an EIS implementation plan. The document will describe the scope of the EIS and the plan for its preparation. DOE shall, in formulating the plan, consult with Idaho. When it is complete, Idaho will have the opportunity to review and comment on the plan. DOE shall consider Idaho's comments on the plan in preparing the EIS.
2. On or before June 30, 1994, issue a draft EIS. The Navy will cooperate in the preparation of the draft EIS and will do all that is necessary to prepare its portion of the document.
3. On or before April 30, 1995, issue a final EIS. DOE will, however, use its best efforts to complete the final EIS sooner. The Navy will cooperate in the preparation of the final EIS and will do all that is necessary to prepare its portion of the document.
4. Thirty days after the issuance of the final EIS and in no event later than June 1, 1995, issue a record of decision based upon the final EIS.

Until the issuance of the record of decision, the Court's injunction will remain in effect, subject to the following modifications:

1. The Navy may ship to Idaho for detailed examination and storage spent naval fuel that the Secretary of Energy and the Secretary of Navy jointly certify is required to be promptly examined for the purposes of research and development. The certification shall be in writing

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and provided to the Governor of Idaho in advance of any such shipments. The shipments authorized by this paragraph shall not exceed nine containers of spent naval fuel, as follows:

- a. Five containers of spent nuclear fuel from the USS Enterprise may be transported to INEL on or after August 1993;
- b. Two containers of spent nuclear fuel from 688 class submarines may be transported to INEL on or after August 1993; and,
- c. Two containers of spent nuclear fuel from the Knolls Atomic Power Laboratory may be transported to INEL on or after July 1994.

The Secretaries of Energy and Navy shall submit bi-annual reports to Idaho identifying when the preceding spent naval fuel was examined.

2. All spent nuclear fuel stored at the Charleston Naval Shipyard and the Mare Island Shipyard may be shipped to INEL in conjunction with the cessation of nuclear operations at those shipyards. The shipments authorized by this paragraph shall not exceed a total of eight containers of spent naval fuel, as follows:
 - a. Three containers of spent nuclear fuel may be transported to INEL on or after January 1994;
 - b. Three containers of spent nuclear fuel from the shipyards may be transported to INEL on or after June 1994; and,
 - c. Two containers of spent nuclear fuel from the shipyards may be transported to INEL on or after January 1995.
3. To provide containers to preclude tying up warships at shipyards with spent naval fuel on board, the Navy may ship to INEL on or after July 1994, one container of spent naval removed from a submarine at or near the Puget Sound Naval Shipyard. For the same reason, the Navy also may ship to INEL on or after January 1995, one additional container of spent naval fuel removed from a submarine at either the Puget Sound Naval Shipyard or the Portsmouth Naval Shipyard.

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4. Additional shipments of spent naval fuel will be permitted only if the Secretary of the Department of Defense certifies that national security is threatened by the Navy's inability to transport spent fuel to INEL and upon application by the Navy under the Federal Rules of Civil Procedure, the Court modifies the injunction. The Secretary of Defense is expected to proffer such a certification to enable the Navy to meet its schedule for the refueling of the USS Nimitz and the return of that warship to operating service, and the State of Idaho reserves its right to contest any application by the Navy to modify the injunction. Any modification of the injunction by the Court shall specify the types and quantities of spent fuel to be shipped to INEL to avoid a threat to national security.
5. By the end of 1993, the Navy will prepare any required environmental assessment(s) under NEPA covering sites other than INEL where spent naval fuel will be stored pursuant to the injunction and this agreement. If litigation is commenced in any jurisdiction to challenge the storage of spent naval fuel as required by the injunction and this agreement at any location outside Idaho, the Navy shall defend against such litigation and the DOE and the Navy shall not oppose Idaho's intervention in the litigation. In the event that a restraining order or injunction is issued precluding the Navy from storing spent naval fuel in that jurisdiction, the provisions of the preceding paragraph shall apply.
6. DOE may procure spent fuel storage racks suitable for use in reracking Building 666 at INEL's Chemical Processing Plant, provided that the racks will not be installed in that building, if at all, until the EIS process is completed as scheduled above and unless such reracking is required by the record of decision. The spent fuel storage racks so procured shall be suitable for use in DOE facilities in addition to those located at INEL. Procurement of such racks shall not prejudice consideration of alternatives in the EIS nor the outcome in the record of decision.

Finally, DOE will accomplish the following:

1. Accelerate the removal of spent nuclear fuel from Building 603 at INEL's Chemical Processing Plant. Spent fuel from the North and Middle basins of Building

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603 will be transferred to Building 666 by December 31, 1996, except for that spent nuclear fuel which cannot be transferred to or stored in Building 666 due to safety considerations mutually agreed upon by the state and DOE. Only that spent fuel that cannot be safely transferred to or stored in Building 666 will be transferred to the South basin of Building 603 and temporarily stored there pending the availability of other interim storage. The South Basin of Building 603 will be emptied of all spent nuclear fuel by December 31, 2000.

2. Accelerate activities related to the treatment of liquid high-level waste at the INEL. In support of this, DOE will:
 - a. select a limited number of potential technology options by November 15, 1993;
 - b. evaluate and conduct tests to determine the viability of these options; and,
 - c. select a technology for preparing liquid high-level waste for calcining, including selection of a pretreatment technology, if appropriate, by December 31, 1995, or a later date if specifically approved by the state of Idaho.
3. Accelerate its consideration of technologies to convert calcined wastes into a final form for disposal, and select an appropriate technology in conjunction with the Record of Decision for the final EIS.
4. Work with the state of Idaho and the Eastern Idaho Economic Development Council to join in a financial partnership with DOE's new INEL contractor to encourage regional economic development. DOE will actively support technology transfer, worker retraining and enhanced training, local business development, and other economic activities. In support of these activities, DOE will provide financial support through a grant to the state or to an entity approved and designated by the Governor, in an amount acceptable to both parties.

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I will have my attorneys draft the needed papers and forward those papers to your attorneys and the Department of Justice, for their review and concurrence.

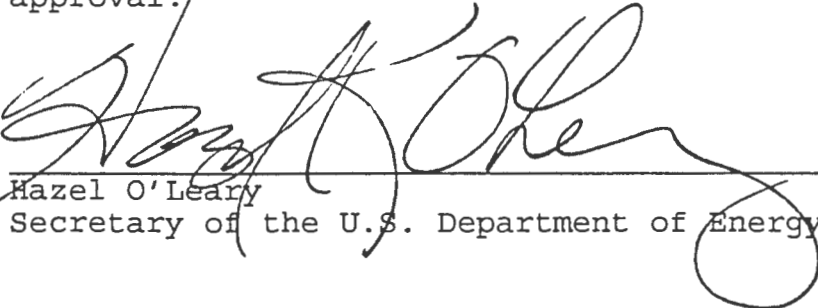
With best regards,

Sincerely,

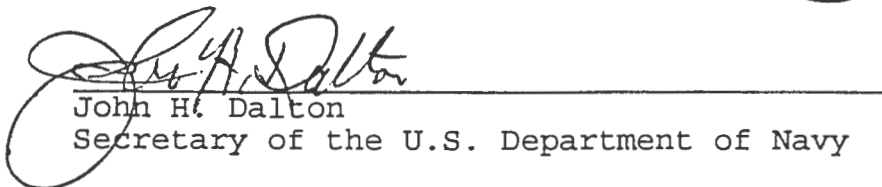


Cecil D. Andrus
Governor of the State of Idaho

By our signatures below, dated this 9th day of August 1993, we acknowledge that this letter accurately states our agreement with the Governor of the state of Idaho and stipulate that the terms of our agreement shall be embodied in appropriate pleadings to be submitted to the Court for its approval.



Hazel O'Leary
Secretary of the U.S. Department of Energy



John H. Dalton
Secretary of the U.S. Department of Navy